

1 Michael R. Lozeau (State Bar No. 142893)
2 Douglas J. Chermak (State Bar No. 233382)
3 LOZEAU DRURY LLP
4 410 12th Street, Suite 250
5 Oakland, CA 94607
6 Tel: (510) 836-4200
7 Fax: (510) 836-4205
8 E-mail: michael@lozeaudrury.com
9 doug@lozeaudrury.com

10 Attorneys for Plaintiff
11 CENTER FOR COMMUNITY ACTION
12 AND ENVIRONMENTAL JUSTICE

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 CENTER FOR COMMUNITY
16 ACTION AND ENVIRONMENTAL
17 JUSTICE, a non-profit corporation,

18 Plaintiff,

19 vs.

20 MILL MAN STEEL, INC., a Colorado
21 corporation,

22 Defendant.

23 Case No. _____

24 COMPLAINT FOR DECLARATORY
25 AND INJUNCTIVE RELIEF AND
26 CIVIL PENALTIES

27 (Federal Water Pollution Control Act,
28 33 U.S.C. §§ 1251 to 1387)

29 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
30 JUSTICE (“CCAEJ”), a California non-profit corporation, by and through its counsel,
31 hereby alleges:

32 **I. JURISDICTION AND VENUE**

33 1. This is a civil suit brought under the citizen suit enforcement provisions
34 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean
35

1 Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties
2 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
3 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
4 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
5 (power to issue declaratory relief in case of actual controversy and further necessary
6 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
7 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

8 2. On November 9, 2016, Plaintiff provided notice of Defendant's
9 violations of the Act, and of Plaintiff's intention to file suit against Defendant, to the
10 Administrator of the United States Environmental Protection Agency ("EPA"); the
11 Administrator of EPA Region IX; the Executive Director of the California State Water
12 Resources Control Board ("State Board"); the Executive Officer of the California
13 Regional Water Quality Control Board, Santa Ana Region ("Regional Board"); and to
14 Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct
15 copy of CCAEJ's notice letter is attached as Exhibit A, and is incorporated by
16 reference.

17 3. More than sixty days have passed since notice was served on Defendant
18 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
19 alleges, that neither the EPA nor the State of California has commenced or is
20 diligently prosecuting a court action to redress the violations alleged in this complaint.
21 This action's claim for civil penalties is not barred by any prior administrative penalty
22 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

23 4. Venue is proper in the Central District of California pursuant to Section
24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
25 located within this judicial district.

26 **II. INTRODUCTION**

27 5. This complaint seeks relief for Defendant's discharges of polluted storm

1 water from Defendant's industrial facility located at 15585 Arrow Route in Fontana,
2 California ("Facility") in violation of the Act and National Pollutant Discharge
3 Elimination System ("NPDES") Permit No. CAS000001, State Water Resources
4 Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by
5 Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are
6 collectively referred to hereinafter as the "Permit" or "General Permit"). Defendant's
7 violations of the discharge, treatment technology, monitoring requirements, and other
8 procedural and substantive requirements of the Permit and the Act are ongoing and
9 continuous.

10 **III. PARTIES**

11 6. Plaintiff CCAEJ is a non-profit public benefit corporation under the laws
12 of the State of California with its main office in Jurupa Valley, California. CCAEJ is
13 dedicated to working with communities to advocate for environmental justice and
14 pollution prevention. CCAEJ and its members are deeply concerned with protecting
15 the environment in and around their communities, including the Santa Ana River
16 Watershed. To further these goals, CCAEJ actively seeks federal and state agency
17 implementation of the Act and other laws and, where necessary, directly initiates
18 enforcement actions on behalf of itself and its members.

19 7. CCAEJ has members living in the community adjacent to the Facility and
20 the Santa Ana River Watershed. They enjoy using the Santa Ana River and its
21 tributaries for recreation and other activities. Members of CCAEJ use and enjoy the
22 waters into which Defendant has caused, is causing, and will continue to cause,
23 pollutants to be discharged. Members of CCAEJ use those areas to recreate and view
24 wildlife, among other things. Defendant's discharges of pollutants threaten or impair
25 each of those uses or contribute to such threats and impairments. Thus, the interests of
26 CCAEJ's members have been, are being, and will continue to be adversely affected by
27 Defendant's failure to comply with the Clean Water Act and the Permit. The relief

1 sought herein will redress the harms to Plaintiff caused by Defendant's activities.

2 8. CCAEJ brings this action on behalf of its members. CCAEJ's interest in
3 reducing Defendant's discharges of pollutants into the Santa Ana River and its
4 tributaries and requiring Defendant to comply with the requirements of the General
5 Permit are germane to its purposes. Litigation of the claims asserted and relief
6 requested in this Complaint does not require the participation in this lawsuit of
7 individual members of CCAEJ.

8 9. Continuing commission of the acts and omissions alleged above will
9 irreparably harm Plaintiff and one or more of its members, for which harm they have no
10 plain, speedy or adequate remedy at law.

11 10. Defendant MILL MAN STEEL, INC. ("Mill Man") is a corporation that
12 operates the Facility at issue in this action.

13 **IV. STATUTORY BACKGROUND**

14 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
15 any pollutant into waters of the United States, unless such discharge is in compliance
16 with various enumerated sections of the Act. Among other things, Section 301(a)
17 prohibits discharges not authorized by, or in violation of, the terms of an NPDES
18 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

19 12. Section 402(p) of the Act establishes a framework for regulating
20 municipal and industrial storm water discharges under the NPDES program. 33
21 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
22 Section 402(p) to regulate industrial storm water discharges through individual
23 permits issued to dischargers or through the issuance of a single, statewide general
24 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

25 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
26 of the U.S. EPA has authorized California's State Board to issue NPDES permits
27 including general NPDES permits in California.

1 General Permit

2 14. The State Board elected to issue a statewide general permit for industrial
3 storm water discharges. The State Board originally issued the General Permit on or
4 about November 19, 1991. The State Board modified the General Permit on or about
5 September 17, 1992. Pertinent to this action, the State Board reissued the General
6 Permit on or about April 17, 1997 (the “1997 Permit”), and again on or about April 1,
7 2014 (the “2015 Permit”), pursuant to Section 402(p) of the Clean Water Act, 33
8 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.
9 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or
10 makes more stringent the same requirements as the 1997 Permit.

11 15. In order to discharge storm water lawfully in California, industrial
12 dischargers must comply with the terms of the General Permit or have obtained and
13 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

14 16. The General Permit contains several prohibitions. Effluent Limitation
15 B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require
16 dischargers to reduce or prevent pollutants in their storm water discharges through
17 implementation of the Best Available Technology Economically Achievable (“BAT”)
18 for toxic and nonconventional pollutants and the Best Conventional Pollutant Control
19 Technology (“BCT”) for conventional pollutants. Discharge Prohibition A(2) of the
20 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water
21 discharges and authorized non-storm water discharges that cause or threaten to cause
22 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997
23 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water
24 discharges to any surface or ground water that adversely impact human health or the
25 environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving
26 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit
27 storm water discharges that cause or contribute to an exceedance of any applicable
28

1 water quality standards contained in Statewide Water Quality Control Plan or the
2 applicable Regional Board's Basin Plan.

3 17. In addition to absolute prohibitions, the General Permit contains a variety
4 of substantive and procedural requirements that dischargers must meet. Facilities
5 discharging, or having the potential to discharge, storm water associated with
6 industrial activity that have not obtained an individual NPDES permit must apply for
7 coverage under the State's General Permit by filing a Notice of Intent to Comply
8 ("NOI"). Dischargers have been required to file NOIs since March 30, 1992.

9 18. Dischargers must develop and implement a Storm Water Pollution
10 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities
11 and measures that comply with the BAT and BCT standards. The General Permit
12 requires that an initial SWPPP has been developed and implemented before October
13 1, 1992. The objective of the SWPPP requirement is to identify and evaluate sources
14 of pollutants associated with industrial activities that may affect the quality of storm
15 water discharges and authorized non-stormwater discharges from a facility, and to
16 implement best management practices ("BMPs") to reduce or prevent pollutants
17 associated with industrial activities in storm water discharges and authorized non-
18 storm water discharges. *See* 1997 Permit, § A(2); 2015 Permit, § X(C). These BMPs
19 must achieve compliance with the General Permit's effluent limitations and receiving
20 water limitations, including the BAT and BCT technology mandates. To ensure
21 compliance with the General Permit, the SWPPP must be evaluated and revised as
22 necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to develop or
23 implement an adequate SWPPP, or update or revise an existing SWPPP as required, is
24 a violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

25 19. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a
26 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention
27 team; a site map; a list of significant materials handled and stored at the site; a

1 description of potential pollutant sources; an assessment of potential pollutant sources;
2 and a description of the BMPs to be implemented at the facility that will reduce or
3 prevent pollutants in storm water discharges and authorized non-stormwater
4 discharges, including structural BMPs where non-structural BMPs are not effective.
5 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP
6 requirements as the 1997 Permit, except that all dischargers are now required to
7 develop and implement a set of minimum BMPs, as well as any advanced BMPs as
8 necessary to achieve BAT/BCT, which serve as the basis for compliance with the
9 2015 Permit's technology-based effluent limitations and receiving water limitations.
10 See 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive
11 assessment of potential pollutant sources than the 1997 Permit; more specific BMP
12 descriptions; and an additional BMP summary table identifying each identified area of
13 industrial activity, the associated industrial pollutant sources, the industrial pollutants,
14 and the BMPs being implemented. See 2015 Permit, §§ X(G)(2), (4), (5). Section
15 X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm
16 water discharge locations.

17 20. The 2015 Permit requires dischargers to implement and maintain, to the
18 extent feasible, all of the following minimum BMPs in order to reduce or prevent
19 pollutants in industrial storm water discharges: good housekeeping, preventive
20 maintenance, spill and leak prevention and response, material handling and waste
21 management, erosion and sediment controls, an employee training program, and
22 quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to
23 implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015
24 Permit, Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to
25 implement and maintain, to the extent feasible, any one or more of the following
26 advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial
27 storm water discharges: exposure minimization BMPs, storm water containment and
28

1 discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See
2 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to
3 achieve compliance with either technology or water quality standards is a violation of
4 the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP
5 descriptions and a BMP Summary Table. *See* 2015 Permit, § X(H)(4), (5).

6 21. The General Permit requires dischargers to develop and implement an
7 adequate written Monitoring and Reporting Program. The primary objective of the
8 Monitoring and Reporting Program is to detect and measure the concentrations of
9 pollutants in a facility’s discharge to ensure compliance with the General Permit’s
10 discharge prohibitions, effluent limitations, and receiving water limitations. As part
11 of their monitoring program, dischargers must identify all storm water discharge
12 locations that produce a significant storm water discharge, evaluate the effectiveness
13 of BMPs in reducing pollutant loading, and evaluate whether pollution control
14 measures set out in the SWPPP are adequate and properly implemented. The 1997
15 Permit required dischargers to collect storm water samples during the first hour of
16 discharge from the first storm event of the wet season, and at least one other storm
17 event during the wet season, from all storm water discharge locations at a facility. *See*
18 1997 Permit, § B(5). A sample must be collected from each discharge point at the
19 facility, and in the event that an operator fails to collect samples from the first storm
20 event, the operators must still collect samples from two other storm events and “shall
21 explain in the Annual Report why the first storm event was not sampled.” *See* 1997
22 Permit, § B(5)(a). The 2015 Permit now mandates that facility operators sample *four*
23 (rather than two) storm water discharges from all discharge locations over the course
24 of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

25 22. Facilities are required to make visual observations of storm water
26 discharges. The visual observations must represent the quality and quantity of the
27 facility’s storm water discharges from the storm event. 1997 Permit, § B(7); 2015

1 Permit, § XI.A.

2 23. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and
3 analyze storm water samples from two qualifying storm events (“QSEs”) during the
4 first half of each reporting year (July 1 to December 31) and two QSEs during the
5 second half of each reporting year (January 1 to June 30).

6 24. Under the 1997 Permit, facilities must analyze storm water samples for
7 “toxic chemicals and other pollutants that are likely to be present in storm water
8 discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii). Under the 2015
9 Permit, facilities must analyze storm water samples for “[a]dditional parameters
10 identified by the Discharger on a facility-specific basis that serve as indicators of the
11 presence of all industrial pollutants identified in the pollutant source assessment.”
12 2015 Permit, § XI(B)(6)(c).

13 25. Section B(14) of the 1997 Permit requires dischargers to include
14 laboratory reports with their Annual Reports submitted to the Regional Board. This
15 requirement is continued with the 2015 Permit. Fact Sheet, Paragraph O.

16 26. The 1997 Permit, in relevant part, requires that the Annual Report
17 include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE
18 Report”). 1997 Permit, § B(14). As part of the ACSCE Report, the facility operator
19 must review and evaluate all of the BMPs to determine whether they are adequate or
20 whether SWPPP revisions are needed. The Annual Report must be signed and
21 certified by a duly authorized representative, under penalty of law that the information
22 submitted is true, accurate, and complete to the best of his or her knowledge. The
23 2015 Permit now requires operators to conduct an Annual Comprehensive Facility
24 Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of
25 current BMPs and the need for additional BMPs based on visual observations and
26 sampling and analysis results. *See* 2015 Permit, § XV.

27 27. The General Permit does not provide for any mixing zones by

1 dischargers. The General Permit does not provide for any receiving water dilution
2 credits to be applied by dischargers.

3 **Basin Plan and Water Quality Standards**

4 28. The Regional Board has identified beneficial uses of the Santa Ana
5 Region's waters and established water quality standards for the Santa Ana River and
6 its tributaries in the "Water Quality Control Plan for the Santa Ana River Basin
7 (Region 8)," generally referred to as the Basin Plan.

8 29. The beneficial uses of these waters include, among others, groundwater
9 recharge, water contact recreation, non-contact water recreation, wildlife habitat,
10 warm freshwater habitat, and rare, threatened or endangered species. The non-contact
11 water recreation use is defined as "[u]ses of water for recreational activities involving
12 proximity to water, but not normally involving contact with water where water
13 ingestion is reasonably possible. These uses include, but are not limited to,
14 picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine
15 life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above
16 activities."

17 30. The Basin Plan includes a narrative toxicity standard which states that
18 "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic
19 resources to levels which are harmful to human health."

20 31. The Basin Plan includes a narrative suspended and settleable solids
21 standard which states that "Inland surface waters shall not contain suspended or
22 settleable solids in amounts which cause a nuisance or adversely affect beneficial
23 uses..."

24 32. The Basin Plan provides that "[t]he pH of inland surface waters shall not
25 be raised above 8.5 or depressed below 6.5..."

26 33. The Basin Plan contains a narrative floatables standard which states that
27 '[w]aste discharges shall not contain floating materials, including solids, liquids, foam

1 or scum, which cause a nuisance or adversely affect beneficial uses.”

2 34. The EPA has adopted a freshwater numeric water quality standard for
 3 zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712
 4 (May 18, 2000) (“California Toxics Rule” or “CTR”).

5 35. EPA has established Parameter Benchmark Values as guidelines for
 6 determining whether a facility discharging industrial storm water has implemented the
 7 requisite BAT and BCT. These benchmarks represent pollutant concentrations at
 8 which a storm water discharge could potentially impair, or contribute to impairing,
 9 water quality, or affect human health from ingestion of water or fish. The following
 10 EPA benchmarks have been established for pollution parameters applicable to the
 11 Facility: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100
 12 mg/L; oil and grease (“O&G”) – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L;
 13 nitrate + nitrite as nitrogen (“N+N”) – 0.68 mg/L; and iron – 1.0 mg/L.

14 36. These benchmarks are reflected in the 2015 Permit in the form of
 15 Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs,
 16 which reflect the 2008 MSGP benchmark values, and instantaneous maximum NALs,
 17 which are derived from a Water Board dataset. The following annual NALs have
 18 been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc –
 19 0.26 mg/L; aluminum – 0.75 mg/L; N+N – 0.68 mg/L; and iron – 1.0 mg/L. An
 20 exceedance of annual NALs occurs when the average of all samples obtained for an
 21 entire facility during a single reporting year is greater than a particular annual NAL.
 22 The reporting year runs from July 1 to June 30. The 2015 Permit also establishes the
 23 following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and
 24 O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs when two or
 25 more analytical results from samples taken for any single parameter within a reporting
 26 year exceed the instantaneous maximum NAL value (for TSS and O&G) or are
 27 outside of the instantaneous maximum NAL range for pH. When a discharger
 28

1 exceeds an applicable NAL, it is elevated to “Level 1 Status,” which requires a
 2 revision of the SWPPP and additional BMPs. If a discharger exceeds an applicable
 3 NAL during Level 1 Status, it is then elevated to “Level 2 Status.” For Level 2 Status,
 4 a discharger is required to submit an Action Plan requiring a demonstration of either
 5 additional BMPs to prevent exceedances, a determination that the exceedance is solely
 6 due to non-industrial pollutant sources, or a determination that the exceedance is
 7 solely due to the presence of the pollutant in the natural background.

8 37. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
 9 enforcement actions against any “person,” including individuals, corporations, or
 10 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
 11 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
 12 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
 13 penalties of up to \$37,500 per day per violation for all violations occurring since
 14 October 28, 2011 up to and including November 2, 2015, and up to \$51,570 for
 15 violations occurring after November 2, 2015, pursuant to Sections 309(d) and 505 of
 16 the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

17 **V. STATEMENT OF FACTS**

18 38. Defendant Mill Man owns and/or operates the Facility, a 3.5 acre
 19 industrial site located within the City of Fontana.

20 39. The Facility is a steel processing and fabrication facility that falls within
 21 Standard Industrial Classification (“SIC”) Code 3441.

22 40. Based on CCAEJ’s investigation, including a review of the Facility’s
 23 Notice of Intent to Comply with the Terms of the Industrial General Permit (“NOI”),
 24 SWPPP, aerial photography, and CCAEJ’s information and belief, storm water is
 25 collected and discharged from the Facility through a series of channels that discharge
 26 via at least one outfall. The outfall discharges storm water and pollutants contained in
 27 that storm water to channels that flow into the Santa Ana River. Plaintiff is informed
 28

1 and believes and thereupon alleges that pollutants discharged from the Facility flow
2 into the West Fontana Channel, which flows into the San Sevaine Creek, which then
3 flows into Reach 3 of the Santa Ana River, and then into the Pacific Ocean.

4 41. Plaintiff is informed and believes, and thereupon alleges that the storm
5 water flows over the surface of the Facility where industrial activities occur including
6 metal cutting areas, storage areas, loading/unloading areas, and areas where airborne
7 materials associated with the industrial processes at the Facility may settle onto the
8 ground. Plaintiff is informed and believes, and thereupon alleges that storm water
9 flowing over these areas collects suspended sediment, dirt, metals, and other
10 pollutants as it flows towards the storm water discharge locations.

11 42. On information and belief, Plaintiff alleges that the majority of storm
12 water discharges from the Facility contain storm water that is commingled with runoff
13 from areas at the Facility where industrial processes occur.

14 43. Plaintiff is informed and believes, and thereupon alleges, that the
15 management practices at the Facility are currently inadequate to prevent the sources of
16 contamination described above from causing the discharge of pollutants to waters of
17 the United States. The Facility lacks sufficient structural controls such as grading,
18 berthing, roofing, containment, or drainage structures to prevent rainfall and storm
19 water flows from coming into contact with exposed areas of contaminants. The
20 Facility lacks sufficient structural controls to prevent the discharge of water once
21 contaminated. The Facility lacks adequate storm water pollution treatment
22 technologies to treat storm water once contaminated.

23 44. Since at least November 27, 2015, Defendant has collected and analyzed
24 samples or arranged for storm water discharge samples to be collected and analyzed at
25 the Facility. The sample results were reported in certified documents submitted to the
26 Regional Board.

27 45. The Facility has consistently reported high pollutant levels from its storm
28

1 water sampling results.

2 46. The Facility has violated numeric and narrative water quality standards
3 established in the Basin Plan and have thus violated Discharge Prohibition A(2) and
4 Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge
5 Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of
6 the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3)
7 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

8 47. The levels of zinc in storm water detected by the Facility have exceeded
9 the freshwater numeric water quality standard established by the EPA of 0.12 mg/L
10 for zinc (CMC). For example, on December 11, 2015, the level of zinc measured
11 from one of the Facility's storm water outfalls was 0.66 mg/L. That level of zinc is
12 5.5 times the CMC for zinc. The Facility also exceeded the CMC for zinc on
13 November 27, 2015.

14 48. The Facility has violated the narrative water quality standard for
15 suspended/settleable solids in the Basin Plan, repeatedly observing cloudy storm
16 water discharges from the Facility. This has occurred on November 29, 2012;
17 October 31, 2012; April 3, 2012; March 26, 2012; January 23, 2012; and December
18 12, 2011.

19 49. The levels of TSS in storm water detected by the Facility have exceeded
20 the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and
21 the State Board, respectively. For example, on December 11, 2015, the level of TSS
22 measured by Defendant at its outfall was 270 mg/L. That level of TSS is nearly three
23 times the benchmark value and annual NAL for TSS. Defendant also has measured
24 levels of TSS in storm water discharged from the Facility in excess of 100 mg/L on
25 November 27, 2015.

26 50. The levels of iron in storm water detected by the Facility have exceeded
27 the benchmark value and annual NAL for iron of 1.0 mg/L established by EPA and
28

1 the State Board, respectively. For example, on December 11, 2015, the level of iron
2 measured by Defendant at its outfall was 13 mg/L. That level of iron is 13 times the
3 benchmark value and annual NAL for iron. Defendant also has measured levels of
4 iron in storm water discharged from the Facility in excess of 1.0 mg/L on November
5 27, 2015.

6 51. The levels of aluminum in storm water detected by the Facility have
7 exceeded the benchmark value and annual NAL for aluminum of 0.75 mg/L
8 established by EPA and the State Board, respectively. For example, on December 11,
9 2015, the level of aluminum measured by Defendant at its outfall was 7.8 mg/L. That
10 level of aluminum is over ten times the benchmark value and annual NAL for
11 aluminum. Defendant also has measured levels of aluminum in storm water
12 discharged from the Facility in excess of 0.75 mg/L on November 27, 2015.

13 52. The levels of zinc in storm water detected by the Facility have exceeded
14 the benchmark value and annual NAL for zinc of 0.26 mg/L established by EPA and
15 the State Board, respectively. For example, on December 11, 2015, the level of zinc
16 measured by Defendant at its outfall was 0.66 mg/L. That level of zinc is over 2.5
17 times the benchmark value and annual NAL for zinc. Defendant also has measured
18 levels of zinc in storm water discharged from the Facility in excess of 0.26 mg/L on
19 November 27, 2015.

20 53. The levels of N+N in storm water detected by the Facility have exceeded
21 the benchmark value and annual NAL for N+N of 0.68 mg/L established by EPA and
22 the State Board, respectively. On December 11, 2015, the level of N+N measured by
23 Defendant at its outfall was 1.11.1 mg/L. That level of N+N is over 1.5 times the
24 benchmark value and annual NAL for N+N.

25 54. On information and belief, CCAEJ alleges that Mill Man failed to collect
26 and anaylze storm water discharges from the Facility during the 2011-2012, 2012-
27 2013, 2013-2014, and 2014-2015 wet seasons.

1 55. On information and belief, CCAEJ alleges that Mill Man's storm water
2 discharges are not commingled with run-on from neighboring properties.

3 56. On information and belief, CCAEJ alleges that Mill Man failed to collect
4 and analyze samples from four storm water discharges from the Facility during the
5 2015-2016 reporting year.

6 57. On information and belief, CCAEJ alleges that Mill Man failed to
7 analyze its November 27, 2015 storm water discharge for N+N.

8 58. On information and belief, CCAEJ alleges that Mill Man failed to
9 conduct monthly visual observations of storm water discharges during numerous
10 months during the past five years. Based on precipitation data compared to the dates
11 in which the Facility did conduct monthly visual observation of storm water
12 discharges, CCAEJ alleges that Mill Man failed to conduct monthly visual
13 observations of storm water discharges at its storm water discharge locations on
14 numerous occasions. CCAEJ alleges that Defendant has failed to conduct monthly
15 visual observations of storm water discharges from the Facility during the following
16 months: February 2012, November 2014, December 2014, January 2015, April 2015,
17 and May 2015.

18 59. On information and belief, CCAEJ alleges that Mill Man has consistently
19 failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015
20 Permit, by failing to complete proper ACSCE Reports as well as proper Annual
21 Evaluations for the Facility.

22 60. On information and belief, Plaintiff alleges that since at least December
23 8, 2011, Defendant has failed to implement BAT and BCT at the Facility for its
24 discharges of TSS, iron, zinc, aluminum, N+N, and other potentially un-monitored
25 pollutants. Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A)
26 of the 2015 Permit requires that Defendant implement BAT for toxic and
27 nonconventional pollutants and BCT for conventional pollutants by no later than
28 October 1, 1992. As of the date of this Complaint, Defendant has failed to implement

1 BAT and BCT.

2 61. On information and belief, Plaintiff alleges that since at least December
 3 8, 2011, Defendant has failed to implement an adequate SWPPP for the Facility.
 4 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for
 5 the Facility does not set forth site-specific best management practices for the Facility
 6 that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
 7 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not
 8 comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails
 9 to include BMPs to minimize dust generated from industrial materials or activities.
 10 The SWPPP fails to include BMPs that cover all stored industrial materials that can be
 11 readily mobilized by contact with storm water. The SWPPP fails to include required
 12 advanced BMPs. The SWPPP fails to describe any efforts to implement and maintain
 13 minimum BMPs. CCAEJ notes that the SWPPP indicates that “COD” is a potential
 14 pollutant from the dumpster and roll-offs. On information and belief, CCAEJ alleges
 15 that COD is not present at the Facility. The SWPPP also fails to identify and
 16 implement advanced BMPs that are not being implemented at the Facility because
 17 they do not reflect best industry practice considering BAT/BCT. According to
 18 information available to CCAEJ, Defendant’s SWPPP has not been evaluated to
 19 ensure its effectiveness and revised where necessary to further reduce pollutant
 20 discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
 21 does not include each of the mandatory elements required by the General Permit.
 22

23 62. Information available to CCAEJ indicates that as a result of these
 24 practices, storm water containing excessive pollutants is being discharged during rain
 25 events to channels that flow into the West Fontana Channel, which flows into the San
 26 Sevaine Creek, which then flows into Reach 3 of the Santa Ana River.

27 63. Plaintiff is informed and believes, and thereupon alleges, that Defendant
 28 has failed and continues to fail to alter the Facility’s SWPPP and site-specific BMPs

consistent with the General Permit.

64. Information available to Plaintiff indicates that Defendant has not fulfilled the requirements set forth in the General Permit for discharges from the Facility due to the continued discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuous.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Failure to Implement the Best Available and Best Conventional Treatment Technologies

(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

65. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

66. The General Permit's SWPPP requirements and Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendant has failed to implement BAT and BCT at the Facility for its discharges of TSS, iron, aluminum, zinc, N+N, and other potentially un-monitored pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

67. Each day since December 8, 2011, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

68. Defendant has been in violation of the BAT/BCT requirements every day since December 8, 2011. Defendant continues to be in violation of the BAT/BCT

1 requirements each day that they fail to develop and fully implement BAT/BCT at the
2 Facility.

SECOND CAUSE OF ACTION
**Discharges of Contaminated Storm Water
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311, 1342)**

69. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

70. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

71. Plaintiff is informed and believes, and thereupon alleges, that since at least December 8, 2011, Defendant has been discharging polluted storm water from the Facility in excess of the applicable water quality standard for zinc and the narrative quarter quality standard for suspended/settleable material in violation of Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

72. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with zinc, sediment, and other potentially un-monitored pollutants at

1 levels above applicable water quality standards. The storm water then flows untreated
2 to channels that flow into the West Fontana Channel, which flows into the San
3 Sevaine Creek, which then flows into Reach 3 of the Santa Ana River.

4 73. Plaintiff is informed and believes, and thereupon alleges, that these
5 discharges of contaminated storm water are causing or contributing to the violation of
6 the applicable water quality standards in a Statewide Water Quality Control Plan and/or
7 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation
8 C(2) of the General Permit.

9 74. Plaintiff is informed and believes, and thereupon alleges, that these
10 discharges of contaminated storm water are adversely affecting human health and the
11 environment in violation of Receiving Water Limitation C(1) of the General Permit.

12 75. Every day since at least December 8, 2011, that Defendant has discharged
13 and continue to discharge polluted storm water from the Facility in violation of the
14 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33
15 U.S.C. § 1311(a). These violations are ongoing and continuous.
16

17 **THIRD CAUSE OF ACTION**
18 **Failure to Prepare, Implement, Review, and Update**
19 **an Adequate Storm Water Pollution Prevention Plan**
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

20 76. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
21 fully set forth herein.

22 77. The General Permit requires dischargers of storm water associated with
23 industrial activity to develop and implement an adequate SWPPP no later than
24 October 1, 1992.

25 78. Defendant has failed to develop and implement an adequate SWPPP for
26 the Facility. Defendant's ongoing failure to develop and implement an adequate
27 SWPPP for the Facility is evidenced by, *inter alia*, Defendant's failure to justify each
28

minimum and advanced BMP not being implemented.

79. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

80. Each day since December 8, 2011, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

81. Defendant has been in violation of the SWPPP requirements every day since December 8, 2011. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

FOURTH CAUSE OF ACTION
**Failure to Develop and Implement an
Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

82. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

83. The General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

84. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility.

85. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, its failure to conduct collect and analyze any storm water discharges from the Facility for many consecutive wet seasons.

86. Each day since at least December 8, 2011, that Defendant has failed to

1 develop and implement an adequate monitoring and reporting program for the Facility
2 in violation of the General Permit is a separate and distinct violation of the General
3 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite
4 monitoring and analytical results are ongoing and continuous violations of the Act.

5 **VII. RELIEF REQUESTED**

7 Wherefore, Plaintiff respectfully requests that this Court grant the following
8 relief:

- 9 a. Declare Defendant to have violated and to be in violation of the Act as
10 alleged herein;
- 11 b. Enjoin Defendant from discharging polluted storm water from the
12 Facility unless authorized by the 2015 Permit;
- 13 c. Enjoin Defendant from further violating the substantive and procedural
14 requirements of the 2015 Permit;
- 15 d. Order Defendant to immediately implement storm water pollution
16 control and treatment technologies and measures that are equivalent to BAT or BCT;
- 17 e. Order Defendant to immediately implement storm water pollution
18 control and treatment technologies and measures that prevent pollutants in the Facility's
19 storm water from contributing to violations of any water quality standards;
- 20 f. Order Defendant to comply with the Permit's monitoring and reporting
21 requirements, including ordering supplemental monitoring to compensate for past
22 monitoring violations;
- 23 g. Order Defendant to prepare a SWPPP consistent with the Permit's
24 requirements and implement procedures to regularly review and update the SWPPP;
- 25 h. Order Defendant to provide Plaintiff with reports documenting the
26 quality and quantity of their discharges to waters of the United States and their efforts
27 to comply with the Act and the Court's orders;

- i. Order Defendant to pay civil penalties of up to \$37,500 per day per violation for all violations occurring since October 28, 2011 up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

j. Order Defendant to take appropriate actions to restore the quality of waters impaired or adversely affected by their activities;

k. Award Plaintiff's costs (including reasonable investigative, attorney, witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

1. Award any such other and further relief as this Court may deem appropriate.

Dated: February 6, 2017

Respectfully submitted,

By: /s/ Douglas J. Chermak
Douglas J. Chermak
LOZEAU DRURY LLP
Attorneys for Center for Community Action
and Environmental Justice